IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.44003 OF 2002
and
WVMP.No.147 OF 2003 & WPMP.NO.64558 OF 2002

Sri Mahalakshmi Trust,
33, Mahalakshmi Colony,
Besant Nagar,
Chennai 600 090
rep. by its Trustee
M.S. Srinivasa Raghavan .. Petitioner

-Vs-

1. The Commissioner,
Hindu Religious & Charitable
Endowment (Administration),
Nungambakkam High Road,
Chennai 600 034.

2. The Joint Commissioner,
Hindu Religious & Charitable
Endowment (Administration),
Nungambakkam High Road,
Chennai 600 034.

3. The Executive Officer,
Arulmighu Sri Mahalakshmi Temple,
Besant Nagar, Chennai 600 090. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Declaration as stated therein.

For Petitioner : Mr. Mohan Parasaran
Senior Counsel for
Mr.S. Ramesh

For Respondents 1-2 : Mr.G. Sugumaran
Special Govt. Pleader(HRCE)

Respondent-3 : Mr.A.S. Kailasam for

M/s.A.S.Kailasam
& Associates

:J U D G M E N T

The present writ petition has been filed by Sri Mahalakshmi Trust for issuing a writ of declaration declaring that the first respondent, the Commissioner, HR & CE Department is incompetent to entertain any appeal or proceedings of the petitioner□s Trust including the entertaining of the appeal filed by the third respondent against the order of the Joint Commissioner, H.R & C.E dated 16.11.1998 in O.A.No.3/96/C1.

2. The petitioner claims to be a charitable and religious Trust. It is stated that the petitioner had instituted C.S.No.703 of 1999 in the High Court seeking permission to enable the trustees to dispose of the properties endowed to the Trust by entering into a joint development agreement. It is stated that the High Court by order dated 24.4 .2000 has granted permission after ensuring that the petitioner Trust settles the liabilities of various creditors. It is claimed that long back the second respondent, namely the Joint Commissioner, H.R & C.E., had initiated a suo motu proceedings and passed order under Section 63(f)(g) of the Hindu Religious and Charitable Endowment Act (hereinafter referred to as □the Act□) holding that the properties covered by the deed of settlement executed by Sri K.S. Balasubramaniam was given for secular uses and the properties could be appropriated for the secular purposes in terms of the said Act. One P.N. Muralidharan claiming to be an aggrieved person, filed appeal under Section 69 of the Act before the Commissioner, H.R & C.E., the first respondent. However, subsequently the aforesaid P.N. Muralidharan had taken steps to withdraw such appeal. It is further stated that the third respondent has filed an application for being impleaded in C.S.No.7 03 of 1999 and further the High Court has directed that status quo should be maintained. Subsequently, the third respondent has filed an appeal before the first respondent after a delay of 447 days, but it seems that such delay has been condoned by the first respondent. It is contended by the petitioner that since the Civil Suit is pending before the High Court and the Trust can be governed only under Section 92 C.P.C., the matter cannot be prosecuted before the first respondent. It is further contended that the first respondent has no jurisdiction to deal with the appeal and in any case the first respondent, which is a creature of statute and not a Civil Court, does not have any power to condone the delay invoking the provisions contained in Section 5 of the Limitation Act.

3. A counter affidavit has been filed on behalf of third respondent where the basic allegations raised by the petitioner had been countered.

4. An appeal has been preferred by the third respondent against the order passed by the second respondent in the purported exercise of jurisdiction under Section 63 of the Act. Appeal against such an order can be filed by an aggrieved person before the Commissioner. However, a specific period of limitation of 60 days has been provided in Section 69(1) of the Act.

5. The contention of the petitioner is to the effect that the Commissioner, H.R & C.E is not a Civil Court and the provisions contained in Section 5 of the Limitation Act is inapplicable.

6. It appears that the question of applicability of Section 5 of the Limitation Act to an appeal proceedings under the Hindu Religious and Charitable Endowment Act was specifically considered in the decision of this Court reported in 1983 T.L.N.J 155 (NAGARAJAN v. THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (ADMINISTRATION) DEPARTMENT, MADRAS). It has been specifically held that the Commissioner while exercising appellate jurisdiction exercises power akin to a Civil Court and has jurisdiction to apply the provisions contained in Section 5 of the Limitation Act. In view of such specific decision, the contention of the petitioner is that the first respondent had no jurisdiction to condone delay is not acceptable.

7. The next contention raised by the petitioner relates to the jurisdiction of the first respondent. It is not disputed that the matter is pending before the first respondent. Whether the first respondent has jurisdiction or not is a matter which can be agitated before the first respondent and can be decided by such first respondent. It would not be proper for the High Court to consider this aspect in this writ petition as the matter can be decided by the Commissioner, the first respondent.

8. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed without any order as to costs. Consequently, the connected miscellaneous petitions are closed.

16-07-2004

Index : Yes
Internet : Yes

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To

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